

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 10, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on December 10, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commission Member Ricky Wright were present at the meeting. Commission Member Mike Joyner was unable to attend.

MINUTES OF NOVEMBER 10, 2004 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the November 10, 2004 meeting into the record. Seconded by Commissioner Wright. So ordered. Chairman Fox made a motion to approve the minutes from the November 10, 2004 meeting. Seconded by Commissioner Wright. So ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that he found no conflicts of interest. Chairman Fox stated that he wished to recuse himself from ruling on Hearing Case #38, Tidal Market II, Hearing Case #51, Lucky's, First Offense Case #14, Gas Center 4, and First Offense Case #34, Wilco 391.

I. HEARING CASES- 62 Listed

Chairman Fox asked Assistant Counsel LoRita K. Pinnix for information concerning Hearing Case #1, Ward's Grocery. Ms. Pinnix stated that this was an underage sale case heard in August before Administrative Law Judge Beryl E. Wade. The permittee did not contest the violation, but wanted to mitigate the penalty. The Administrative Law Judge had recommended that a penalty of ten days suspension with the last five days suspended upon payment of \$500.00 be imposed in this case. Due to the favorable record at the location, she recommended that the Administrative Law Judge's recommendation be adopted. Chairman Fox made a motion to accept the Administrative Law Judge's recommendation. Seconded by Commissioner Wright. So ordered.

Ms. Pinnix further stated that four permittees were present and wished to be heard concerning their cases.

Hearing Case #23, Circle K 5100- Attorney William W. Webb, Jr. addressed the commission on behalf of Circle K Incorporated regarding this case. He stated that this case had come before the Commission at an earlier meeting, and at that time the Commission agreed to amend the penalty from 30 days suspension with the last five days suspended upon payment of a fine of \$3,000.00 to a payment of \$4,000.00 and no active suspension provided the location conduct an ABC class. Mr. Webb stated that he had spoken with Danny Sellers and requested that a class be conducted, and that Circle K, Incorporated had agreed to the amended penalty. Chairman Fox asked if he should continue the case to the January 10, 2005 meeting in order to give Mr. Sellers time to conduct the class. Mr. Webb had no objection. The case was handled by Assistant Counsel K. Renee Cowick, who also stated that she had no objection to continuing the case. Chairman Fox made a motion to continue the case to the January meeting. Seconded by Commissioner Wright. So ordered.

Hearing Case #21, Billie Jean's Grasshopper Farm- Jerry Plummer addressed the Commission regarding this case. He stated that he had no argument concerning the violation, but that Billie Jean's Grasshopper Farm had been an ABC establishment since February 1993, and during that time they had only a few violations. He believed that some consideration should be given to the longevity of his business and asked that his penalty of 30 days suspension with the last 25 suspended upon payment of \$3,000.00 be reconsidered.

Chairman Fox asked Mr. Plummer what the food to alcohol sales ratio was at Billie Jean's Grasshopper Farm. Mr. Plummer replied that the ratio was 80% food and 20% alcohol. Chairman Fox asked if the clientele was mainly families, and Mr. Plummer stated that it was. He stated that when the business first opened, the bar would stay open until 2:00 a.m. on Friday and Saturday nights, which attracted a crowd he did not wish to cater to, so now the bar closes at 12:00 midnight on Friday and Saturday nights.

Chairman Fox asked Ms. Cowick to provide information regarding this case. Ms. Cowick stated that the location had gone for almost ten years before receiving a violation, and that within 13 months, Billie Jean's Grasshopper Farm had received three violations. She stated that Mr. Plummer had been very prompt and cooperative, and that she had no objections if the Commission were to lower the penalty for his violation.

Chairman Fox asked Mr. Plummer how often he hosts ABC classes. He replied that he conducts training sessions every six months. Chairman Fox asked when the last training session had occurred, and Mr. Plummer replied that it occurred approximately six months ago. Chairman Fox recommended that the five day active suspension be waived on the condition that an ABC class be conducted within the next 30 days at his location. Seconded by Commissioner Wright. So ordered.

First Offense Case #8, Demetrios- Permittee Kiki Karvounis addressed the commission regarding this case. Mrs. Karvounis stated that the violation at her business occurred while she was undergoing treatment for thyroid cancer, and that she wished for some consideration to be given to her penalty of 10 days active suspension or payment of a \$1,000.00 fine for this reason and the fact that Demetrio's had no previous violations.

Chairman Fox asked when the last time any ABC training had been conducted at the business. Mrs. Karvounis stated that ABC officers and ALE agents had visited the business within the past six months, but not to conduct any ABC training. Chairman Fox made a motion to reduce the fine to \$500.00 on the condition that an ABC training class be conducted at Demetrio's within the next 30 days. Seconded by Commissioner Wright. So ordered.

Hearing Case #38, Tidal Market II- Permittee Sandra Burwell addressed the Commission regarding this case. She stated that between the locations she and her husband owned, they had been in business for 28 years, and during that time had only three violations. She further stated that their businesses catered mostly to a seasonal clientele, seeing the majority of sales from April to the beginning of October each year, and that Tidal Market II's business is currently very slow. Due to this fact, she felt that her penalty of 20 days suspension or payment of a \$2,000.00 fine could not be borne by her business.

Chairman Fox interjected and stated that, being from the Wilmington area, he generally recuses himself from hearing matters brought to the Commission concerning businesses in or around the immediate area of Wilmington to prevent the appearance of a conflict of interest. He had previously recused himself from hearing the case of Tidal Market II, which is located in Wilmington, for this reason, and since Commissioner Joyner was not present, a consensus could not be reached on this case unless Chairman Fox withdrew his recusal. He stated that he would do so provided there were no objections from the Commission's legal staff. Acting General Counsel Timothy W. Morse stated that he had no objection. Chairman Fox asked if Mrs. Burwell had any objections, and she replied that she did not.

Mrs. Burwell continued, saying that due to the imminent closing of the Wrightsville Beach bridge for repairs, she anticipated a loss of much of her local business since many customers come from that direction.

Mr. Morse stated that this case's compliance dates could be moved back into February to give Mrs. Burwell more time to accumulate the money for the penalty.

Commissioner Wright asked Ms. Cowick what kind of consideration could be given to the fact that Mrs. Burwell had been in business for 28 years with only three violations. Ms. Cowick stated that Tidal Market II had gone nearly eleven years without a violation, but had unfortunately accumulated two violations within the past two years. The previous violation was just about to leave consideration when the current violation occurred, which would have qualified Tidal Market II for first-offense status. In light of this fact, and the fact that Mrs. Burwell had been very cooperative regarding this case, Ms. Cowick stated that she had no objection to lowering the fine.

Commissioner Wright made a motion that the penalty be reduced to \$1,000.00 on condition that an ABC class be conducted at Tidal Market II within the next 30 days. Seconded by Chairman Fox. So ordered.

Chairman Fox made a motion to ratify the remainder of the Offers in Compromise for the hearing cases. Seconded by Commissioner Wright. So ordered.

II. FIRST OFFENSE CASES – 35 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on December 8, 2004, pursuant to the Commission's authorizing resolution dated November 8, 2002:

401 66 Service and Grocery- 20601 Wagram Road, Laurinburg, NC 28352
Applebee's Neighborhood Grill and Bar- 4483 Hwy 70 West, Kinston, NC 28504
Bi Lo 533- 2538 South Church Street, Burlington, NC 27215
Boone Saloon- 489 West King Street Suite A-B, Boone, NC 28607
Chuck E Cheeses- 2032 Catawba Valley Parkway, Hickory, NC 28602
Circle K 8620- 4100 Western Boulevard, Raleigh, NC 27615
Community Grocery- 840 Wilson Lee Boulevard, Statesville, NC 28677
Demetrios- 6928 Wilkinson Boulevard, Belmont, NC 28012
Double Door Inn at the Lake- 19501 Catawba Avenue Unit 7, Cornelius, NC 28031
Eckerd Drugs 3978- 2014 South Croatan Hwy, Kill Devil Hills, NC 27948
Eckerd Drugs 3979- 5312 Virginia Dare Trail, Kitty Hawk, NC 27949
Fast Track 137- 1460 West Memorial Hwy, Union Grove, NC 28689
Food Lion 707- 1523 Lafayette Street, Shelby, NC 28150
Gas Center 4- 421 Castle Hayne Road, Wilmington, NC 28401
Harris Teeter 289- 2915 Essex Circle, Raleigh, NC 27608
Harris Teeter Supermarket 114- 3823 Guess Road, Durham, NC 27701
McClaren Mini Mart- 26421 North Turnpike Road, Wagram, NC 28396
Mustang II- 507 East Main Street, Forest City, NC 28043
Omni Food Mart- 401 South Linwood Road, Gastonia, NC 28052
Produce Corner Grocery- 1000 McGrits Bridge Road, Laurinburg, NC 28352
Ranch House- 5614 Wilkinson Boulevard, Charlotte, NC 28208
Red Rocks Café- 8712 Lindholm Drive, Huntersville, NC 28078
Sagebrush Steakhouse and Saloon- 1237 East Dixon Boulevard, Shelby, NC 28150
Scotchman 198- 1659 South Main Street, Laurinburg, NC 28352
Small Towns Convenience Mart- 115 North Monk Street, Magnolia, NC 28453
Stop N Shop Convenience and Deli- 100 South Virginia Dare Trail, Kill Devil Hills, NC 27948
Times Turn Around Food Store 22- 3050 Union Road, Gastonia, NC 28052
Union Grove Quick Stop- 1489 West Memorial Hwy 901, Harmony, NC 28634
Wal Mart Supercenter 1849- 320 East Hanes Mill Road, Winston Salem, NC 27105
Whites Shopping Center- Hwy 64 and 264, Manns Harbor, NC 27953
Whizz Mart 4- 908 North Marine Boulevard, Jacksonville, NC 28540
Wilco 214- 3912 Western Boulevard, Raleigh, NC 27606
Wilco 391- 7413 Market Street, Wilmington, NC 28405
Food Lion 2520- 175 Roanoke Avenue, Roanoke Rapids, NC 27870

Chairman Fox made a motion to ratify the Offers in Compromise for the first offense cases with the exception of First Offense Cases #14, Gas Center 4, and #34, Wilco 391, which were to be continued to the January 14, 2004 meeting. Seconded by Commissioner Wright. So ordered.

III. ABC STORE LOCATION – HIGH POINT ABC BOARD

Administrator Michael Herring addressed the Commission concerning the opening of a new ABC store in High Point, North Carolina. On October 29, 2004, the ABC Commission received a letter from General Manager George Humble of the High Point ABC Board requesting the ABC Commission's approval to open a new ABC store in High Point. On October 29, 2004, the ABC Commission requested that Alcohol Law Enforcement conduct an investigation of the proposed location, and on November 2, 2004, ALE Agent Christ Watkins began the investigation. The High Point ABC Board plans to lease property in the Oak Hollow Shopping Center located on 1589 Skeet Club Road. The property for the proposed location is owned by Starmount Company. No conflict of interest exists between the property owners and High Point ABC Board members. The nearest church is the Parkwood Baptist Church located a half a mile from the proposed location. The nearest school is Florence Elementary School, located .8 miles from the proposed location.

Pursuant to ABC Commission regulations, a notice of intent to open an ABC store was posted at the proposed location on October 29, 2004. To date, no objections to the opening of an ABC store at the proposed site have been received by the ABC Commission. However, the Commission did receive a letter from the Greensboro ABC Board on November 9, 2004, expressing concern about oversaturation in the area, but they did not file a formal complaint.

Mr. Herring illustrated the site of the proposed location with the aid of a map sent by the High Point ABC Board. He stated that the High Point ABC Board had plans to open this location when the Commission approved the opening of an ABC store by the Greensboro ABC Board off of Hwy 68 at the August 13, 2004 meeting. High Point's proposed location is located inside High Point in a residential area next to a 24-hour Harris Teeter grocery store. The new location will also serve as a mixed beverage outlet for local permittees. The High Point ABC Board hopes that the new location will help relieve another store, approximately six miles to the south, that has sales of approximately three million dollars per year.

Mr. Herring recommended that the ABC Commission approve the proposed location.

Chairman Fox made a motion to approve the proposed location. Seconded by Commissioner Wright. So ordered.

IV. ABC STORE LOCATION – CARTERET COUNTY ABC BOARD

Mr. Herring addressed the Commission concerning the opening of an ABC store the Carteret County ABC system. He stated that he wished to continue this matter until the January 10, 2005 meeting, as the Notice of Intent to open an ABC store had been posted at the proposed location for only 20 days.

V. ABC STORE LOCATION – DARE COUNTY ABC BOARD

Mr. Herring addressed the Commission concerning the Dare County ABC Board's intention to relocate the Kitty Hawk ABC Store location. On November 9, 2004, the Commission received a letter from Fields Scarborough requesting approval to relocate the store in Kitty Hawk, North Carolina. On November 10, 2004, the ABC Commission requested that Alcohol Law Enforcement conduct an investigation of the proposed location, and on November 16, 2004, ALE Supervisor Pat Forbis began the investigation. The Dare County ABC Board plans to build a new store at 5430 North Croatan Hwy. The property is a vacant lot currently owned by the Dare County ABC Board and was purchased on April 1, 1997 from Kitty Hawk Building Supply of North Carolina. Upon approval, construction will begin in January 2005 and opening is scheduled to occur in June 2005. The location will also serve as a mixed beverage outlet for permittees in the Kitty Hawk area.

The nearest church is the All Saints Episcopal Church, located .9 miles from the proposed location. The nearest school is the Kitty Hawk Elementary School, located .5 miles from the proposed location. Pursuant to ABC Commission regulations, a notice of intent to open an ABC store was posted at the proposed location on November 8, 2004. To date, the ABC Commission has received no objections to the opening of an ABC store at the proposed site.

Mr. Herring recommended that the Commission approve the proposed location.

Chairman Fox asked if Mr. Herring knew how large the store was going to be. Mr. Herring stated that he did not have the exact square footage, but that it would be a large location. Chairman Fox asked if the store would serve as part of Kitty Hawk's warehouse system, and Mr. Herring replied that the store would provide additional warehouse space.

Chairman Fox made a motion to approve the Dare County ABC Board's request. Seconded by Commissioner Wright. So ordered.

VI. OTHER BUSINESS

Chairman Fox stated that he had been in contact with Drake and Associates regarding the revising of the job descriptions for ABC personnel, and that the warehouse employees had received salary adjustments and back pay.

Mr. Herring stated that many of the job descriptions are currently being processed in the office of State Personnel at Department of Commerce, and that hopefully some result would be seen in the early part of 2005.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Jason Hall, Legal Division